

**MAY 22 2003**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON  
U.S. COURT OF APPEALS

PHONG THANH NGUYEN,

Petitioner - Appellee,

v.

UNITED STATES IMMIGRATION AND  
NATURALIZATION SERVICE; FEDERAL  
DETENTION CENTER SEATAC;  
KATRINA C. PFLAUMER; JANET RENO,

Respondents - Appellants.

No. 01-36059

D.C. No. CV-01-00076-MJP

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, District Judge, Presiding

Submitted October 7, 2002\*\*  
Seattle, Washington

Before: FERGUSON, FISHER and TALLMAN, Circuit Judges.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

The Immigration and Naturalization Service appeals the district court's grant of habeas relief to Appellee Phong Thanh Nguyen.

The district court held that § 212(h) of the Immigration and Nationality Act ("INA"), as amended by § 348(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), violates the equal protection clause by denying consideration of discretionary relief from deportation to legal aliens convicted of "aggravated felonies," but permitting consideration of relief from deportation to illegal aliens convicted of the same offenses.

Our recent decision in *Taniguchi v. Schultz*, 303 F.3d 950 (9th Cir. 2002) controls. We held that there is a rational basis for denying a § 212(h) waiver to aggravated felon legal aliens but not to other aliens. *Id.* at 957-58. The order of the district court is **REVERSED**.